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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/689,886	10/21/2003	Jerry Zucker	PGI6044P1131US	3882

32116 7590 01/30/2006

WOOD, PHILLIPS, KATZ, CLARK & MORTIMER
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SUITE 3800
CHICAGO, IL 60661

EXAMINER

MATZEK, MATTHEW D

ART UNIT	PAPER NUMBER
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1771

DATE MAILED: 01/30/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

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Office Action Summary	Application No. 10/689,886	Applicant(s) ZUCKER, JERRY	
	Examiner Matthew D. Matzek	Art Unit 1771	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 26 October 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-11 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-11 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 21 October 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

Response to Amendment

1. The Amendment dated 10/26/2005 has been fully considered and entered into the Record. The amended claims and new claims 10 and 11 contain no new matter. Claims 1-11 are currently active. The rejection of claims 1-9 under the provisional obviousness-type double patenting with Application 10/819,034 has been withdrawn due to the Terminal Disclaimer filed 10/26/2005. The rejection of claims 1-9 under 35 U.S.C. § 112 2nd paragraph has been withdrawn as the instantly claimed article provides sufficient direction to create the claimed article.

Claim Rejections - 35 USC § 102

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

2. Claims 1-9 are rejected under 35 U.S.C. 102(b) as being anticipated by Pike (US 5,935,883) as substantially set forth in the Office Action dated 6/24/2005. Claims 10 and 11 are now also rejected under 35 U.S.C. 102(b) as being anticipated by Pike. New claims 10 and 11 have a broader scope than that of the article of instant claim 1 and as such are also rejected in the same manner as set forth in the Office Action dated 6/24/2005. The new limitation set forth in amended claim 1 is anticipated by the invention of Pike as the two layers of the absorbent article may be combined via hydroentangling (col. 8, lines 6-16 and col. 1, lines 53-61). Claim 2 is rejected because by adjusting the thickness of the conjugate microfibers, the split microfibers of the invention can be produced having a thickness of about 200 nanometers or less (col. 4, lines 57-61).

Art Unit: 1771

3. Claims 1-9 are rejected under 35 U.S.C. 102(e) as being anticipated by Vonfeldt et al. (US 6,739,023) as substantially set forth in the Office Action dated 6/24/2005. Claims 10 and 11 are now also rejected under 35 U.S.C. 102(b) as being anticipated by Vonfeldt. New claims 10 and 11 have a broader scope than that of the article of instant claim 1 and as such are also rejected in the same manner as set forth in the Office Action dated 6/24/2005. Amended claim 1 is rejected as Vonfeldt et al. teach a method of forming a nonwoven composite fabric comprising hydroentangling a first layer of spittable fibers and a second layer of staple fibers (Abstract). Hydroentangling is also taught as a means of split fiber production (col. 2, lines 8-10). The splittable fibers applied invention have a denier of less than about 0.7 and most desirably a denier of less than about 0.01 (col. 2, lines 37-41). When using a density of 1.14 grams/cm³ (polyester fiber) the diameter of the splittable fibers is most desirably less than 1 μ m (conversions done by Examiner).

Response to Arguments

4. Applicant's arguments filed 10/26/2005 have been fully considered but they are not persuasive.
5. The arguments pertaining to the rejection of claims 1-9 under 35 U.S.C. 112, second paragraph, as being indefinite have been addressed supra.
6. Applicant argues that Pike is directed to a splittable conjugate meltblown fiber, which splits prior to hydroentanglement and does not teach the incorporation of splittable fibers into an associated substrate. Examiner agrees that Pike does not teach the use of external energy to split the fibers, however Pike does teach the use of splittable fibers (Abstract). One embodiment teaches the use of the split fiber web along with at least one additional woven or nonwoven

Art Unit: 1771

fabric or film. The two layers may be combined via hydroentangling (col. 8, lines 6-16). While the fiber is not split via hydroentangling the final article of Pike is structurally the same as that of Applicant, containing a layer of split fibers hydroentangled in a second substrate layer. The presence of process limitations on product claims, in which the product does not otherwise patentably distinguish over prior art, cannot impart patentability to the product. *In re Stephens*, 145 USPQ 656.

7. Once the Examiner provides a rationale tending to show that the claimed product appears to be the same or similar to that of the prior art, although produced by a different process, the burden shifts to Applicant to come forward with evidence establishing an unobvious difference between the claimed product and the prior art product. *In re Marosi*, 218 USPQ 289, 292.

8. Applicant argues that Vonfeldt et al. does not teach or suggest an elastic modulus differential as set forth in instant claim 1. Examiner agrees that Vonfeldt et al. does not teach the instantly claimed elastic modulus differential, however as the applied article and that of Applicant are made by the same process of providing a layer of splittable fibers on top of a second layer (substrate) of staple fibers and then entangling the two layers via hydroentanglement (Abstract-Vonfeldt et al.; page 10, lines 18-30 Applicant's specification) that the splittable fibers of the two inventions are made of common composition (col. 5, lines 12-31-Vonfeldt et al.; page 3, lines 17-28 Applicant's specification) and that the staple fibers of the two inventions are made of pulp fibers (col. 3, lines 50-65-Vonfeldt et al; page 6, lines 15-30 Applicant's specification) the invention of Vonfeldt et al. would possess the instantly claimed elastic modulus differential.

Art Unit: 1771

9. Applicant argues that Vonfeldt et al. teaches that the frangible fibers are split prior to their incorporation into the two layer composite fabric, thereby creating an article that is different than that of Applicant. While the fiber is split prior to its hydroentanglement into the second layer the applied article is structurally the same as that of Applicant. The presence of process limitations on product claims, in which the product does not otherwise patentably distinguish over prior art, cannot impart patentability to the product. *In re Stephens*, 145 USPQ 656.

10. Once the Examiner provides a rationale tending to show that the claimed product appears to be the same or similar to that of the prior art, although produced by a different process, the burden shifts to Applicant to come forward with evidence establishing an unobvious difference between the claimed product and the prior art product. *In re Marosi*, 218 USPQ 289, 292.

Conclusion

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Art Unit: 1771

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Matthew D. Matzek whose telephone number is (571) 272-2423. The examiner can normally be reached on 8:30 am - 5:00 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Terrel Morris can be reached on (571) 272-1478. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

mdm



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